

DISCUSSION OF THE AMENDMENT

Due to the length of the specification herein, Applicants will cite to the paragraph number of the published patent application (PG Pub) of the present application, i.e., US 2005/0169861, when discussing the application description, rather than to page and line of the specification as filed.

Claim 1 has been amended by adding a minimum arithmetic mean limitation, as supported in the specification in Table 2, Sample 3 of Example 3, together with other Examples having a higher arithmetic mean at paragraph [0052], together with definitions at paragraphs [0024]-[0025]. In addition, the term “containing” has been replaced with the synonymous --comprising--, and the term --at least one of-- has been inserted as supported by Claim 2, which recites, *inter alia*, mixed oxides.

Claims 2-4 have been amended for antecedent basis reasons. In addition, Claim 2 has been amended to clarify that the recited oxides are alternatives. Claim 3 has been amended by deleting “by means of” and changing from a plural to singular format. Remaining amendments have been made consistent with the above-discussed amendments.

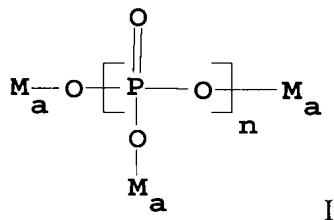
New Claims 16-19 have been amended, and are supported by Claim 1.

No new matter is believed to have been added by the above amendment. Claims 1-19 are now pending in the application. Claims 1-8, 12, 13, and 16-19 are active; Claims 9-11, 14 and 15 stand withdrawn from consideration but are rejoivable.

REMARKS

The rejections under 35 U.S.C. § 103(a) of Claims 1-7 and 12-13 as unpatentable over WO 90/11067 (Elsom et al) in view of US 6,413,490 (Gilges et al), US 5,799,978 (Grinnell) and US 6,464,740 (Towery et al), and of Claim 8 as unpatentable over Elsom et al in view of Gilges et al, Grinnell and Towery et al, and further in view of EP 1557153 (Bleckmann et al) are respectfully traversed.

As recited in Claim 1, an embodiment of the present invention is an aqueous dispersion comprising pyrogenically produced oxide particles of at least one of titanium, zinc, iron or cerium having an average particle size, expressed as a median value, in the dispersion of less than 200 nm, and an arithmetic mean particle size of at least 131 nm, wherein the particle sizes of the oxide particles are not distributed symmetrically in the dispersion and the dispersion comprises as dispersing agent at least one (poly)phosphate corresponding to the general formula I



wherein M = H, an alkali metal, alkaline-earth metal, ammonium ion, Zn²⁺, Al³⁺, Fe²⁺, Fe³⁺, a = 1 or if M is a divalent cation, a = 1/2, if M is a trivalent cation, a = 1/3 with M being identical or different, and wherein said aqueous dispersion has a pH value of 4.5 to 7.5.

Elsom et al discloses sunscreen compositions which comprise a blend of microfine titanium dioxide particles, which particles have a mean primary particle size of between 1 and 100 nm and more preferably between 15 and 50 nm (page 3, lines 1-13). The blend preferably comprises a mixture of at least two, preferably three different grades of microfine titanium dioxide particles, but all are within the range of 1 to 100 nm (page 4, lines 5-17).

The presently-claimed invention, on the other hand, necessarily contains particles larger in size than those of Elsom et al. Elsom et al neither discloses nor suggests increasing the size of their microfine titanium dioxide particles.

Gilges et al has been relied on for its disclosure of pyrogenic titanium dioxide.

Grinnell has been relied on for a disclosure of sodium tripolyphosphate as an emulsifier.

Towery et al has been relied on for a disclosure of pH. However, even if these three references were combined with Elsom et al, the result would still not be the presently-claimed invention.

Bleckmann et al has been relied on for a disclosure of viscosity. However, even if Bleckmann et al were combined with the remaining prior art, the result would still not be the presently-claimed invention.

For all the above reasons, it is respectfully requested that this rejection be withdrawn.

The provisional rejection of Claims 1-2, 4-8 and 12-13 on the ground of nonstatutory obviousness-type double patenting over Claims 1-10 of copending Application No. 10/456,276 ('276 application) in view of Grinnell, is respectfully traversed. Claim 5 of the '276 application, which is the only claim with a particle size limitation, recites that the particles have a primary particle size of between 10 and 100 nm. But the claims neither disclose nor suggest the presently-recited requirement that the particle sizes not be distributed symmetrically, let alone that the particles have an arithmetic mean particle size of at least 131 nm. Accordingly, it is respectfully requested that this rejection be withdrawn.

The provisional rejection of Claims 1-8 and 12-13 on the ground of nonstatutory obviousness-type double patenting over Claims 1-13 of copending Application No. 10/512,684 ('684 application) in view of Grinnell, is respectfully traversed. The claims of the '684 application may contain a phosphate dispersing agent that is different from, and not suggestive of, the presently-recited (poly)phosphate of general formula I. Absent the present

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disclosure as a guide, there would have been no motivation for one skilled in the art to employ the particular phosphate of Grinnell in place of, or in addition to, the phosphate of the '684 application. Accordingly, it is respectfully requested that this rejection be withdrawn.

Applicants respectfully call the Examiner's attention to the Information Disclosure Statement (IDS) filed May 21, 2008. The Examiner is respectfully requested to initial the Form PTO 1449 submitted therewith, and include a copy thereof with the next Office communication.

All of the presently-pending and active claims in this application are now believed to be in immediate condition for allowance. The Examiner is respectfully requested to rejoin the non-elected process claims and in the absence of further grounds of rejection, pass this application to issue with all pending claims.

Respectfully submitted,

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